IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2998 OF 2006

Sankarambadi Srinivasan .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.S.U.Marwadi for applicant
Mr.S.Hingorani, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 16th August 2006

P.C.

. Heard Mr.Marwadi for applicant and learned A.P.P. for State.

2. Applicant apprehends arrest in connection with C.R.No.308 of 2006 registered with Naupada Police Station, Thane. The complainant is a company with whom the applicant was employed and it is the case of complainant that the applicant upon termination of his employment with the

company, after handing over charge, has misappropriated to himself a sum of Rs.5,07,260/-.

3. The case of the applicant is that this complaint is not bonafide at all inasmuch after the employment was terminated and the charge was handed over, it is recorded that the applicant has no claim against the company so also the company has no claim. Payment of this amount by cheque was duly recorded in the letter dated 22nd November 2005 which is signed by the complainant as well.

4. It is his case that there is an abuse of process of criminal law inasmuch as a complaint of defamation is filed by the applicant and as counter blast thereto this complaint is filed by the complainant.

5. I have perused the application and the

annexures thereto including the order passed by the Sessions Judge. It is seen that at the foot of the handing over note between the applicant and the Managing Director who is the complainant dated 22nd November 2005 it is recorded that a cheque for Rs.5,07,260/- has been handed over in full and final settlement as per the agreement which includes three months pay and leave encashment of 21 days. This fact is not prima facie disputed. In such circumstances, there is much substance in the contention of Mr.Marwadi that the dispute is essentially arising out of applicant's service contract or alleged breach thereof, which is purely of a civil nature and crimincal proceeding is not the remedy to recover such sums which are wrongfully with held or paid.

6. I have also perused with his assistance the extract of the bank statement which was produced in court.

7. Further, the applicant is permanent resident of Mumbai and is presently is in consultancy business operating from the address mentioned in the cause title. He is willing to attend local police station. The applicant shall surrender his passport to the I.O.

8. In the light of the above, following order:-

i) In the event of the arrest of the applicant in connection with C.R.No.308 of 2006 registered with Naupada Police Station, Thane the applicant shall be enlarged on bail in the sum of Rs.25,000/- with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will attend the Naupada police station once a week on

every Monday between 7.00 p.m. and 8.00 p.m. The applicant shall surrender his passport to the I.O. It is needless to state that upon surrender of passport to the I.O. in case in future applicant desires travelling abroad, it would be open for him to make such application as is permissible in law and seek return of his passport and such application shall be dealt with by the trial court on its own merits and in accordance with law.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicant

shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)